IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 4008 (SS) OF 2001

(Old No. 4687/1991)

Pratap Singh,
S/o Shri Sunder Singh,
R/o Village Barahat,
District-Uttarkashi. .....Petitioner.

Versus

1. District Magistrate/Collector, Uttar Kashi.
2. District Inspector of Schools, Uttar Kashi.

.....Respondents.

Sri N.S. Negi, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 04.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 1st February, 1991 and 2nd February, 1991 passed by the respondent no. 1 and order dated 01.02.1991 passed by the respondent no. 2 (Annexures No. 12, 15 and 13 to the writ petition).

Brief facts according to the petitioner are that in pursuance of the selection made, an appointment letter was issued on 30th January, 1991 in his favour. The petitioner has joined the educational institution.

As will appear from the appointment letter that the petitioner was appointed in accordance with rules framed under the U.P. Class IV Employees Service Rules, 1975. A perusal of the appointment letter shows to the following effect:-

''कार्यभार ग्रहण करने की तिथि से विभागीय चयन समिति द्वारा चयनित निम्नांकित अभ्यर्थियों को उनके सम्मुख अंकित विद्यालय में चतुर्थ वर्गीय कर्मचारी वेतन क्रम 750.940 परिचालक/ लैववियरर पद पर नितान्त अस्थायी रूप से नियुक्ति किया जाता है। उनकी यह नियुक्ति किसी भी समय बिना पूर्व सूचना के समाप्त की जा सकती है। इस नियुक्ति पर कार्यभार ग्रहण करने हेतु कोई मार्ग व्यय देय नहीं होगा। कार्यभार ग्रहण

करने की अन्तिम तिथि 18.2.1991 होगी। अन्यथा नियुक्ति स्वतः निरस्त समझी जायेगी।''

However, according to the case of the petitioner since some persons could not be appointed, they made complaint and by a general order, the appointment made in favour of the petitioner was cancelled. At the time of filing of the writ petition following interim order was granted on 19.02.1991:-

"Issue notice.

Till further orders, no new selection will be made by the respondents to fill up Class IV vacancies."

As a result of the same, the petitioner is still working as Class IV employee in pursuance of the appointment letters issued in their favour.

A counter affidavit has been filed, where in paragraph 3, it has not been disposed that the vacancy was properly advertised for 72 posts in the newspaper.

In ***Basudeo Tiwary Vs. Sido Kanhu University and others 1998 (8) SCC*** the Apex Court has observed as under:-

"If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such conclusion would not be just, fair or reasonable as noticed by this Court in ***D.T.C. Mazdoor Sabha 1991 Supp (1) SCC 600*** *Case."*

Further more, the petitioner having continued since 1991 and the order having been passed without affording the opportunity to the petitioner, the proper course will be that if any adverse orders are passed, a proper opportunity should have been provided to the petitioner.

In view of the above, writ of certiorari is issued quashing the orders dated 01.02.1991, 02.02.1991 passed by respondent no. 1 and order dated 01.02.1991 passed by respondent no. 2 (Annexure 13, 16 and 14 to the writ petition).

However, the petitioner shall not claim the back wages, if he is not continuing in service. Further it will be open for the respondents to pass fresh order in case any situation so arises.

Subject to the aforesaid, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

04.03.2006
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